

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

MILO D. BURROUGHS,

Plaintiff,

v.

DEPARTMENT OF THE ARMY,

Defendant.

CASE NO. C13-5377 RJB

ORDER DENYING WITHOUT  
PREJUDICE PLAINTIFF'S MOTION  
FOR SUMMARY JUDGMENT

This matter comes before the court on plaintiff's Motion for Summary Judgment. Dkt. 5. The court has considered the motion and the remainder of the file herein.

On May 20, 2013, plaintiff filed a complaint against the Department of the Army, apparently alleging that he applied for an Aerospace Engineer position at Ft. Lewis, Washington; that the rating, ranking and selection process was discriminatory and retaliatory; that he should have been afforded Veterans preference on the rating sheets; and that he was not hired for the many positions for which he applied. Dkt. 1, at 2. Plaintiff apparently alleges violation of Merit Systems Protection Act, 5 U.S.C. § § 1221, 2302, 3318, and 3302; and the Uniform Services

1 Employment and Reemployment Rights Act (USERRA), 38 U.S.C. § 4324(c)(1). Dkt. 1, at 2  
2 and 3.

3 Plaintiff paid the filing fee in this matter and is proceeding *pro se*. Summonses were  
4 issued by the Clerk on May 21, 2013.

5 On July 1, 2013, plaintiff filed a Motion for Summary Judgment, contending that his  
6 rights under the Veterans Preference Act, the Veterans Employment Opportunity Act, USERRA,  
7 and the Civil Service Reform Act were violated when the Army used an Excepted Service  
8 Announcement to employ a person who had scored a lesser number on the rating system than  
9 had plaintiff, who was entitled to a 5 point Veterans Preference. Dkt. 5.

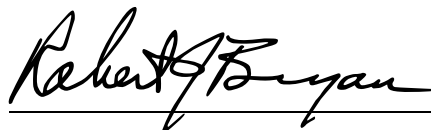
10 Plaintiff has not filed a Certificate of Service showing that defendant has been served in  
11 accordance with Fed.R.Civ.P. 4. *See* Fed.R.Civ.P. 4(l). Further, defendant has not appeared in  
12 this matter. This motion for summary judgment is not properly before the court at this time. The  
13 motion should be denied without prejudice.

14 Plaintiff should be aware of the time limit for effectuating service, as set forth in  
15 Fed.R.Civ.P. 4(m), and the consequences for failing to timely serve defendant.

16 Accordingly, plaintiff's Motion for Summary Judgment (Dkt. 5) is **DENIED**  
17 **WITHOUT PREJUDICE.**

18 The Clerk is directed to send uncertified copies of this Order to all counsel of record and  
19 to any party appearing *pro se* at said party's last known address.

20 Dated this 26<sup>th</sup> day of July, 2013.

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23 ROBERT J. BRYAN  
24 United States District Judge